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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 30th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 25 August 1992, at 11.45 a.m.

Chairman: Mr. ALFONSO MARTINEZ

later: Mr. CHERNICHENKO

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Review of further developments in fields with which the Sub-Commission has been concerned (continued)

* The summary record of the first part (closed) of the meeting appears as document E/CN.4/Sub.2/1992/SR.30.

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GE.92-13705 (E)

The public meeting was called to order at 11.45 a.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1992/4, 5, 6, 7 and Add.1, 8, 9, and Add.1 and 10; E/CN.4/Sub.2/1992/NGO/8, 9, 10 and 18; E/CN.4/Sub.2/1991/55; E/CN.4/1990/56; E/1991/67; A/47/289)

1. The CHAIRMAN declared open the general discussion on agenda item 4.

2. Mr. LI Sang Chil (Liberation) expressed appreciation for the progress made in the work of Mr. van Boven, as mentioned in his report (E/CN.4/Sub.2/1992/8), the recommendation of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1992/34) and Sub-Commission resolution E/CN.4/Sub.2/1992/L.3. In particular, Liberation wished to express appreciation for the Special Rapporteur's observations concerning the sexual slaves forcibly recruited by the Japanese army during the Second World War. In that connection, he would like to refer to the statement made by the Observer for Japan on 10 August 1992, in order to add a few points that should have been made clear. First of all, there had been no agreement between Japan and the Democratic People's Republic of Korea. Japan had no excuse for denying its legal responsibility in the matter and should recognize the fact that what had occurred had been a crime against humanity, a violation of freedom and a violation of the 1930 Forced Labour Convention, ratified by Japan in 1932.

3. He would also like to mention the large number of Korean victims of forced labour, regarding whom the Observer for Japan had said nothing. There had reportedly been 1.5 million of them in Japan and 4.5 million in Korea in the service of large Japanese companies, under particularly difficult conditions: approximately 60 per cent of those persons had worked in mines for wages which were well below those of the Japanese and which had, in any case, never been paid. A total of 576,000 Korean workers were believed to have died in Japan during the war. No compensation had ever been paid to the victims, nor had any punishment ever been inflicted on the perpetrators. From that point of view, Japan presented a striking contrast with Germany, which had prosecuted Nazi war criminals and paid their victims large amounts of compensation. Liberation particularly welcomed the measures advocated in the annex to Mr. van Boven's report - especially those in paragraphs 5, 6, 10, 17, 25, 27 and 28 - to prevent such events from recurring. He would like the annex also to mention the idea of education for children and the general public.

4. Liberation considered it absolutely essential to establish an international tribunal to settle claims from individual victims of gross violations of human rights. It would also like to see a principle established whereby no State ever had the capacity to nullify human rights and fundamental freedoms and any treaty that denied the right to compensation would be considered null and void.

5. Liberation suggested that the Special Rapporteur on Compensation should request information from all Governments concerned, international organizations and non-governmental organizations to enable him to prepare a special report on Japan. It urged the Japanese authorities to admit legal

responsibility, thoroughly investigate every case and pay full compensation to the victims. Lastly, it asked the Sub-Commission and the Secretary-General to give the Special Rapporteur their full assistance.

6. Mrs. ASSAAD (PEN International) paid tribute to Mr. Türk and Mr. Joinet for their final report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9). In 1991, 462 writers and journalists had been imprisoned throughout the world; 377 of them had been detained for over two months, 85 for shorter periods. Many had been imprisoned not under laws dealing specifically with their writings but under national security laws that were used to silence writers. PEN International was also concerned about anti-defamation laws that were used to prohibit all criticism of Governments. It protested against prison terms imposed for crimes of opinion and was concerned at the persecution of writers and journalists aimed at silencing them.

7. PEN International fully endorsed the recommendation of Mr. Joinet and Mr. Türk concerning the appointment of a Special Rapporteur to inquire into persecution against professionals in the field of information and requested that writers, and intellectuals generally, should be included in the Special Rapporteur's mandate.

8. Mrs. PARKER (International Educational Development) said she had followed with interest Mr. van Boven's study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, and had noted in particular the conclusions of the Maastricht Conference, contained in the annex to his second progress report on the question (E/CN.4/Sub.2/1992/8).

9. International Educational Development believed that a wider range of violations should be included in any listing of gross violations. For example, severe damage to health attributable to acts of environmental destruction should be included in the list, as should violations of the right to self-determination of peoples and acts arising from armed conflicts, especially when there were grave breaches of humanitarian law. In that connection she mentioned the United States bombing of a hospital for the mentally ill in Grenada. She herself had represented the victims of that bombing, for which the United States had claimed judicial immunity for acts arising from war. However, the Inter-American Commission on Human Rights of the Organization of American States had accepted the petition, basing its decision in particular on the recognized impossibility of an effective remedy in the United States.

10. Regarding the section of Mr. van Boven's study dealing with victims, International Educational Development believed it was essential to state clearly that victims might not be of the same nationality as the perpetrating country and that the injury might have occurred outside the territory of the State in question. That question had arisen, in particular, when the hospital in Grenada had been bombed. In addition, claimants in one country should be able to institute proceedings against a neighbouring country for harm caused by polluted river water, for example.

11. She drew attention to paragraph 17 of the conclusions of the Maastricht Conference, which dealt with non-monetary reparation for harm suffered and recalled the Montreal Declaration on the independence of the judiciary which strongly criticized trials of civilians by military courts and special courts in general. She endorsed that view, which was derived directly from article 8 of the Universal Declaration of Human Rights.

12. She also endorsed the principle that claims for reparation in cases of serious human rights violations should not be subject to statutory limitations, a principle strengthened by the Vienna Convention on the Law of Treaties. In that context, International Educational Development maintained that the Koreans imprisoned by the Japanese army could demand reparation both from Japan and before United Nations human rights bodies, and could in particular invoke the "1503" procedure in the Sub-Commission.

13. International Educational Development also urged that article 50 of the European Convention on Human Rights, regarding the competence of European mechanisms, should apply by analogy to United Nations bodies, and noted that the concept of remedy was a general principle of law recognized by civilized nations under article 38 (c) of the Statute of the International Court of Justice.

14. Lastly, she drew the Rapporteur's attention to the judgement of the International Court of Justice dated 27 June 1986 in the case Military and Paramilitary Activities In and Against Nicaragua, in which the court had ruled that the United States owed damages to Nicaragua and the victims of illegal acts perpetrated by the United States in Nicaragua. However, following the change of Government in Nicaragua, the reparations part of the claim had apparently been suspended, thus undermining the right of individuals to submit claims. She requested the Rapporteur to study that question further.

15. Mr. Chernichenko took the Chair.

16. Mr. GOLDBERG (The War Amputations of Canada) commended the study by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1992/8). Human rights experts and non-governmental organizations believed that a study of that kind could have a substantial impact on the building up of more efficient law-enforcement mechanisms in order to provide remedies in cases of gross violations of human rights. It was to be hoped that Mr. van Boven's study would lead to the establishment of an international standard requiring countries that had committed gross violations of human rights to compensate their victims. In May 1989 an international conference, jointly sponsored by The War Amputations of Canada and the Canadian Human Rights Foundation, had been held on that very subject. It was to be hoped that the right to compensation would become an undisputed standard of international law.

17. There was a gap in the Geneva Conventions with regard to humanitarian law: although they stipulated that a State which violated the provisions of the Conventions was liable to pay compensation, they did not provide for any mechanism for claims from individual victims. Thus, recourse by an individual was ineffectual if the claim had not been lodged by the claimant's own

Government. It was therefore significant that the van Boven study provided for the initiation of a claim for compensation by the individual himself. An example was the 200,000 Korean women who had been forced into prostitution during the Second World War. While the fact that such violations had been committed was undisputed, the lack of an effective procedure for obtaining compensation required the attention of the international community.

18. With regard to the application of humanitarian law and more particularly the Geneva Conventions, he referred to Mr. van Boven's preliminary report (E/CN.4/1990/10), paragraphs 34, 44 and 45 of which were particularly relevant.

19. In conclusion, he would like to transmit a message from Mr. Humphrey, who had been the first Director of the United Nations Division of Human Rights and who wished to express deep appreciation to Mr. van Boven for his work. Mr. Humphrey has said that he wished to see the United Nations General Assembly adopt a declaration on the right to compensation, which he felt would be an important contribution to the development of international law. Mr. Humphrey had also recalled that he had always favoured the idea that there should be a Universal Court of Human Rights before which individuals would be able to bring a case, for in his view there was nothing more important than the principle, enunciated in the Universal Declaration of Human Rights, that there could be no right without a remedy.

20. Mr. KHALIL said that the report prepared by Mr. Türk and Mr. Joinet on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9) was an extremely important one. The authors had been correct in explaining that that right should not be considered in isolation, but in the context of the other human rights. He also approved of the choice of criteria applicable to restrictions of that right, namely legitimacy, legality, proportionality and democratic necessity. The analysis contained in the report would be useful for many countries, including Egypt. Egypt had entered a new period of democratic reconstruction, in which there was a multi-party system and freedom of the press, and its leaders were often criticized in the newspapers, including the so-called national newspapers.

21. The report dealt with another important and complex question, that of the restrictions that a democratic society could impose in the struggle against racism, a phenomenon which was re-emerging, in particular in certain European countries. In that connection, he supported the conclusions and recommendations of the two Special Rapporteurs that specific safeguard standards should be drawn up with a view to lessening the possible risks to democracy of the theory of the so-called "admissible" restrictions, and the introduction of a special procedure to ensure the protection of professionals in the field of information.

22. Turning to Mrs. Ksentini's report on human rights and the environment (E/CN.4/Sub.2/1992/7), currently before the Commission, in which the author reviewed further developments concerning the recognition and implementation of environmental rights as human rights, he noted that it was a follow-up to the preliminary report (E/CN.4/Sub.2/1991/8) submitted by Mrs. Ksentini to the forty-third session of the Sub-Commission, which had dealt with the

relationship of environmental rights to other human rights. The current report reflected the considerable work done by Mrs. Ksentini. Chapter I dealt with constitutional provisions and national and regional standards, which reflected the increased importance given by States to protection of the environment and preservation of natural resources. However, Mrs. Ksentini pointed out that environmental rights were currently a general social value rather than a legal principle, a conclusion she had reached after conducting a comparative study of the national legislations of several countries. In Chapter II of the report, she dealt with the interdependence between environmental protection and the guarantee of the right to health contained in article 11 of the 1961 European Social Charter. She explained that the monitoring body set up under that Charter had concentrated in recent years on the measures taken by countries to prevent, limit or control pollution, and that the European countries and certain Latin American countries had devoted special attention to the issue. He congratulated Mrs. Ksentini on the trouble she had taken to prepare her valuable report and hoped that she would have the necessary time and resources to complete her study, which dealt with a vital problem for all, that of the environment in relation to human rights.

23. Regarding the second progress report submitted by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1992/8), he stressed that, despite the existence of clearly-defined international standards in that field, the fate of the victims was too often neglected. He would like, for example, to see speedier compensation for victims of gross violations of human rights and fundamental freedoms arising from the illegal invasion and occupation of Kuwait by Iraq. Arguments must be put forward demanding more systematic attention and action at the national and international levels in order to obtain compensation for the victims of gross violations of human rights. In the United Nations, that might take the form of standard-setting, studies, reports, emergency-relief and compensation procedures and practical measures like those provided by the Voluntary Fund for Victims of Torture. It was also extremely important for injured persons to be able to file claims on their own behalf. That was an essential principle for expatriates and other individuals who did not come within the purview of a Government that could request compensation on their behalf. Compensation should be paid in cases of violation not only of political rights but also of economic and social rights.

24. Turning to Mr. Varela Quiros' report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1992/10), he said he was appalled by the frightening figures given by the representative of WHO. It was deplorable that persons having or suspected of having that terrible disease were subjected to all kinds of discrimination, and he supported the conclusions and recommendations of the Special Rapporteur aimed at ensuring that their human rights were respected. Lastly, he regretted that the number of replies to the questionnaire from the institutions concerned had not been as high as expected, and he believed that the Sub-Commission should ask those institutions to help the Special Rapporteur by returning the questionnaire, duly completed.

25. Mr. NEWMAN (Article 19 - the International Centre Against Censorship) said that his organization approved the recommendations made by Mr. Türk and Mr. Joinet in their final report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9 and Add.1), in particular the recommendation that there should be a discussion, in consultation with professional circles in the information media, of the conditions under which the Sub-Commission could take the initiative of drawing up specific safeguard standards, especially with a view to lessening the possible risks to democracy of the theory of the "admissible" restrictions and identifying those elements that constituted the "hard core" of freedom of opinion, expression and information from which no derogation was permitted (E/CN.4/Sub.2/1992/9/Add.1, conclusions and recommendations, para. 6) Article 19 urged the Sub-Commission to explore the possibility of giving effect to that recommendation and was prepared to help in that work.

26. Article 19 also wished to draw the Sub-Commission's attention to the serious violations of freedom of expression being committed in Turkey, Iran, Sri Lanka and Kenya. In Turkey in particular, journalists had come under increasing attack. At least eight journalists had been killed in 1992 in the course of their professional duties, and the Government had done nothing to find their murderers; the Prime Minister had even stated that the victims had been militants in the guise of journalists. Numerous journalists had also been arrested in the first six months of 1992, some were even reported to have been tortured, and several had been sentenced to prison terms of up to 21 months on such charges as "insulting the President" or to extremely high fines for various "offences". An example of the attacks on freedom of expression in Turkey was the censorship of an issue of the weekly Der Spiegel, some of the pages of which had been glued together to prevent readers from seeing an article about the wounding of civilians during the Kurdish New Year celebrations. To draw attention to the serious violations of freedom of the press in Turkey, a consortium of groups working for freedom of expression throughout the world, called IFEX (the International Freedom of Expression Exchange), had designated 9 September as a day of action, and Article 19 called on the members of the Sub-Commission to take similar measures to ensure the protection of journalists' basic human rights.

27. One week earlier, Article 19 had published two reports, copies of which were available in the meeting room, dealing respectively with freedom of the press in Iran and with the victims of the violation of the right to freedom of speech in Sri Lanka by the Liberation Tigers of Tamil Eelam. The Iran report supplemented the 1991 report of the United Nations Special Representative; the Sri Lanka report stressed the need during armed conflicts to monitor repression not only by the Government but also by the Government's opponents. Article 19 had also published a report on Kenya that specifically concerned violations of freedom of expression during elections. Those examples illustrated the need for renewed vigilance regarding freedom of expression.

28. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education - OIDEL) congratulated Mr. Joinet and Mr. Türk for their excellent final report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9 and Add.1). However, his organization regretted that the report dealt only with freedom of the press and neglected other means of expression, such as "teaching, practice, worship and observance" mentioned in

article 18 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It would also have liked to see the concept of freedom of belief and opinion examined more thoroughly, since those were fundamental freedoms that should not be restricted in any way, and specific measures proposed for strengthening them and thereby for strengthening democracy. His organization considered that the State had an active role to play in that field, since its task consisted of promoting, and not simply authorizing, diversity of opinion and a critical approach. The State should, firstly, organize freedom of expression and pluralism by laying down the necessary legal provisions. It should in particular ensure a balance between collective freedoms and individual freedoms and prevent the establishment of monopolies of ideas by the media, educational circles and the culture at large. Next, the State had the duty to protect that freedom by formulating legal standards to provide a balance among all those rights. In order to be valid and effective, however, those legal standards must be supported by economic measures that made it possible actually to exercise those rights. The State should therefore set up systems that restored power to citizens and individual users.

29. It was also regrettable that the report made no mention of the connection between freedom of opinion and expression and freedom of education. In autumn 1991 OIDEL had organized a symposium on that subject at the International Bureau of Education. Over 30 journalists, politicians and educational experts from 10 European countries had attended the symposium, whose final report had just been published. The participants had noted that in most Western countries, the State had a monopoly of education for purely ideological reasons, which was as dangerous as the current concentration of the media, as in a democratic society choice of education had to be considered as even more important than choice of information. They had also noted that in some countries the State had tried to resolve cultural and religious conflicts by establishing a single system of education: that rarely produced good results, since such systems always tended to adopt the social and political features of the majority group and deny the rights of minorities. The current war in the former Yugoslavia was proof that forced integration or unification only exacerbated existing tensions.

30. Mr. FORSTER (International Work Group for Indigenous Affairs) said that his organization welcomed Mrs. Ksentini's progress report on human rights and the environment (E/CN.4/Sub.2/1992/7) and agreed that most environmental concerns could not be divorced from human rights concerns. It was important to note that the destruction of the ecological environment was often accompanied by destruction of the cultural environment. Forced evictions and population transfers were often part of policies which, in the name of development and economic growth, were in fact aimed at dispossessing peoples and communities of their possessions and land and often gave rise to serious conflicts. For example, the Bougainville crisis was the direct result of the violation of the fundamental rights of the landowners whose villages had occupied the site that was now the Panguna Mine. The violation of their rights and destruction of the environment that had accompanied the implementation of the project had led to rebellion by the inhabitants of the region against the multinational mining corporations and the Government, a rebellion that had ultimately resulted in total destruction, war and genocide. Clearly, no development project should be undertaken in third world countries

without prior consideration of all the ecological and cultural consequences. It was therefore essential, first and foremost, to promote and protect the rights of minorities and peoples, in particular their right to self-determination, since prevention was better than cure.

31. Mr. SOTTAS (World Organization against Torture) said that the question of compensation for victims of torture was becoming of increasing concern in many countries. The measures taken to help victims seek care and overcome the social difficulties facing them were neither sufficient nor satisfactory. The Special Rapporteur on that question, Mr. van Boven, should therefore continue his work with a view to proposing, at a future session of the Sub-Commission, a system of compensation that might be the subject of an international convention. An international mechanism would make it possible for victims of serious violations to obtain compensation for the harm suffered and would protect them from pressures to which they might be subjected by those responsible for the violations. Generally speaking, it was the obligation of those responsible to compensate the victims, but it was difficult to apply that principle when they were State agents who had practised torture in the performance of their duties, firstly because the courts in countries where torture was routinely practised were usually too dependent on the Government to punish those responsible, and secondly because amnesty laws had been enacted that made it difficult to establish responsibility and the factual and legal elements on which the request for compensation was based. Moreover, victims often abandoned the idea of instituting very long and burdensome legal proceedings the outcome of which was also uncertain. In addition, for some States which had meagre resources and were emerging from a long period of dictatorship, paying full compensation to the victims might be an almost intolerable burden. Those States could not resolve the economic problems their predecessors had left them and at the same time compensate the victims of earlier offences. That was the case in particular for countries like Haiti, and also Russia, where compensation for the victims of all the violations committed since 1917 might reach sums which the new authorities would certainly have difficulty in paying, in the current economic context. Thus the compensation granted by the authorities in some countries was ultimately purely symbolic.

32. As Mr. van Boven noted in his report (E/CN.4/Sub.2/1992/8), impunity and refusal to compensate were frequently linked, since amnesty laws often made it difficult to conduct the inquiries necessary to establish the harm suffered, responsibility and the type of offence committed. Compensation might also be used to induce the victim not to prosecute the culprits in the name of national reconciliation. It was therefore important for those two issues to be strictly separated. The harm suffered as a result of a serious violation should be evaluated by an independent international body. In that respect, the experience gained by the Compensation Commission established under Security Council resolution 687 (1991) to manage the fund for compensating victims of the damage for which Iraq had been responsible in invading Kuwait could serve as a model. The new body would be competent to receive all compensation requests from victims, examine them and decide how much compensation should be paid by the State responsible within a reasonable period of time. A special fund might be established to help the victims if the State concerned refused to do so, and provision made for measures to force the uncooperative authorities to pay back the sums advanced. That body might

also decide to provide compensation for the victims in the form of gifts, especially in cases where the new Governments in power, which were not responsible for the offences committed by their predecessors, did not have the resources to do so.

33. The problem of compensating the victims of human rights violations was becoming more crucial every day, and the Sub-Commission should therefore set up appropriate mechanisms for resolving it. The United Nations Voluntary Fund for Victims of Torture, whose resources were already quite limited, could do only little to alleviate the suffering of those concerned. There was an urgent need to plan effective international mechanisms to enable the victims as a group to obtain the compensation to which they were entitled, without having to beg for it.

The meeting rose at 1 p.m.